

Persons who sell signs that have commercial value incur Retailers' Occupation Tax liability when making such sales, even if such signs are produced on special order for the purchaser. See 86 Ill. Adm. Code 130.2155. (This is a GIL.)

January 31, 2001

Dear Xxxxx:

This letter is in response to your letter dated November 29, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120(b) and (c), which can be found on the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Please view this letter as a General Information Letter Request.

Facts

My client ('Taxpayer') is in the business of making special-order custom-made signs for businesses. It also makes some generic signs usable by many businesses, as well as installs and affixes some of the signs it sells to the real property of its customers. Installed signs are affixed to real property by cementing, screwing or gluing in place. The custom-made signs made on special order for a customer may contain a special or unique design, size and/or corporate name or logo. Custom-made signs are designed to fit the specific needs of the customers at a specific location. Custom-made signs also include those which are personalized to an individual employee of a business customer (*i.e.*, contains name of employee on sign). Generic signs which are sold are not specially made for any specific customer, but can be brought by any customer for installation or display at the customer's location.

Discussion

The Illinois Retailers' Occupation Tax ('ROT') and Use Tax apply to sales of tangible property at retail from a retailer. 35 ILCS 120/1 *et seq.* The Illinois Service Occupation Tax and corresponding Service Use Tax apply when tangible personal property is transferred incident to the sale of a service from the serviceman. 35 ILCS 115/1 *et seq.* The sale of signs are taxable under the ROT and Use Tax when the sign is not produced on special order for the purchaser and has a commercial value to a person other than the purchaser who is purchasing the sign. Reg. Sec. 130.2155; See also PLR ST 91-0457 (6/11/91). However, 'signs that are attached to buildings or poles that

are intended by the party to be permanently attached to real estate would be considered an improvement to real estate' and are not subject to ROT or Use Tax on their sales price. PLR ST 92-0214 (6/17/94). Rather, the seller would be considered a construction contractor and subject to Use Tax on the cost price of the materials that went into making the sign.

Signs which are custom-made on special order for the purchaser and which also have no commercial value (other than 'salvage value') to anyone other than that particular customer who placed the order, are subject to tax under the Service Occupation Tax ('SOT') and Service Use Tax, rather than the ROT and Use Tax. Reg. Sec. 130.2155; PLR ST 91-0457 (6/11/91); PLR ST 90-0434 (7/17/90). Therefore, the issue of whether the ROT or the SOT applies is dependent upon whether (1) the sign being produced is on special order and (2) it not having a commercial value (other than 'salvage value') to persons other than the purchaser. In this regard, a sign will generally have a commercial value (other than 'salvage value') to someone other than the purchaser if it is a generic sign (rather than an individualized sign) that can be readily used by multiple businesses.

The types of signs produced by Taxpayer can fall into the following categories: (See attachment A for examples of pictures of various signs).

1. Custom-made and special-order signs containing the businesses' name or logo or the names of individuals working for such businesses. (Ex., 'Mr. Jones' sign.)
2. Custom-made and special-order signs made to a specific specification (which may or may not contain the name or logo of the company) but which are of a special size, style and design for a particular location and is customized for the specific customer for the specific location, and thus, have no value to any other customer. (Ex., custom designed 'Admissions/Discharge drop off' sign.)
3. Special-order and custom-made signs (which may or may not include the customer's name or logo) which may set forth particular information concerning the customer or a customer's activity, which is designed for and only useful to the specific customer at customer's designated location. (Ex., custom made 'Laboratory Entrance' or 'Parking Entrance C' sign.)
4. Special-order and custom-made signs for a customer which contain generic information but which are specially *designed* and *made* for a special location, style and fit in a customer's building, and, because of which, have no commercial value to anyone other than the customer. (Ex. Custom designed and made 'Conference Room' sign.)
5. Generic signs which are purchased by customers that can fit into various different locations and could be purchased by other customers.
6. Special-order custom-made signs and generic signs which are installed and affixed to real property by Taxpayer or a Taxpayer hired contractor:
 - a. By cementing a post in place and bolting a sign to it;
 - b. By screwing or bolting the sign or sign holder into a wall or door;
 - c. By gluing the sign to a wall or door.

Taxpayer believes that its sale of the above categories of 1 through 4 are sales of special-order and custom-made signs which are only subject to the SOT and Service Use Tax. Taxpayer is currently registered as a SOT provider. Taxpayer's aggregate cost of materials run between 35 and 50% of its sign sale price. Currently, Taxpayer charges SOT based upon 50% of its sales price of these signs, consistent with the SOT and Service Use Tax. As to generic signs under category 5, that can be purchased by any purchaser or any customer, Taxpayer believes a ROT (UT) rate may be due on such sign sales. With respect to category 6, Taxpayer believes no SOT or ROT is due on signs it bolts to cemented sign posts or glues, screws or bolts into walls or doors. Rather, Taxpayer believes use tax is only due on such signs.

Taxpayer requests a General Information Letter addressing whether the Service Occupation Tax and Service Use Tax should be paid on categories 1 through 4 above. As to its sales of generic signs under category 5 above, it asks for verification whether ROT and Use Tax are due on such sales. Moreover, Taxpayer asks the Department to verify that on those transactions that it installs and affixes signs (both generic and custom-made) as referred to in category 6 above, that only Use Tax on its costs price of materials to make the signs are due on such transactions. Lastly, Taxpayer asks the Department to verify whether its separately stated shipping charges are subject to SOT for those special-order and custom-made signs for which SOT is due on the sale of such custom-made signs.

If you have any questions, please call.

Please be advised that a person who sells signs that have commercial value (i. e., value to persons other than the purchasers thereof) incurs Retailers' Occupation Tax liability when making such sales, even if such signs are produced on special order for the purchaser. Examples of signs having such commercial value would be ones that spell out 'real estate', 'insurance', 'hamburgers' etc. and which do not spell out the name of the purchaser nor the brand name of the purchaser's product and which are not otherwise similarly individualized. Please refer to 86 Ill. Adm. Code 130.2155 Vendors of Signs, enclosed. When a sign that has commercial value is sold and installed, the installation charge is also subject to Retailers' Occupation Tax unless there is a separate agreement for the installation charge. See 86 Ill. Adm. Code 130.450, enclosed.

If the sign vendor produces a sign on special order of the customer and the sign is so specialized that it would be commercially valueless to anyone other than that particular customer who placed the order, the sign vendor would not incur Retailers' Occupation Tax liability. These transactions would be subject to liability under the Service Occupation Tax Act and the sign vendor would be considered a serviceman.

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax. The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under Section 2a of the Retailers'

Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use the second method where they will use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service. Upon selling their product, they are required to collect the corresponding Service Use Tax from their customers.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. Servicemen that incur Service Occupation Tax collect the Service Use Tax from their customers. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not authorized to collect 'tax' from their service customers because they, not their customers, incur the tax liability. Those servicemen are also not liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

The above assumes that the signs remain tangible personal property after installation. If the signs were permanently affixed structurally as real estate, then there would be different tax consequences. Under Illinois law, a person who takes tangible personal property off the market and converts it into permanent real estate is deemed a construction contractor and is the legal end-user of the tangible personal property. The construction contractor, as the user, incurs Illinois Use and local Retailers' Occupation Tax reimbursement liabilities when the tangible personal property that will be converted into real estate is purchased from registered Illinois suppliers. If such items were purchased from suppliers that did not collect the tax, the person who converts the tangible personal property into real estate would be required to self-assess and remit the Use Tax to this Department based upon the cost price of the property. For information on construction contractors, see 86 Ill. Adm. Code 130.1940 and 130.2075, enclosed.

You set forth six categories of signs in your letter. From the information contained in your letter, it appears that the signs you describe in categories 1 and 3 are special-order signs. Therefore, Service Occupation Tax and Service Use Tax would apply. We are unable to make a determination regarding the signs in categories 2 and 4 because of the limited information provided. The signs in category 2 may be subject to Service Occupation Tax and Service Use Tax, however it depends on how the signs are customized. It appears that the signs in category 4 may be subject to Retailers' Occupation Tax. The generic signs you describe in category 5 would be the type of signs to which Retailers' Occupation Tax and Use Tax would apply. Further, the situation you describe in category 6 is a construction contractor situation.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.